

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT J. WALSH,

Plaintiff,

v.

BRIAN WILLIAMS, *et al.*,

Defendants.

Case No. 2:20-cv-01714-GMN-NJK

ORDER

Plaintiff Robert J. Walsh brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while in the custody of the Nevada Department of Corrections. (ECF No. 7). On December 27, 2021, the magistrate judge denied Walsh's application to proceed *in forma pauperis* and directed him to pay the full \$400 filing fee by January 28, 2022.¹ (ECF No. 15). On February 11, 2022, the magistrate judge entered a report and recommendation denying Plaintiff's application to proceed *in forma pauperis* and requiring Plaintiff to pay the full filing fee to proceed with this case. (ECF No. 16). On March 1, 2022, this Court adopted the magistrate judge's report and recommendation in full denying Walsh's application to proceed *in forma pauperis* and requiring Walsh to pay the full \$400 filing fee to proceed with this case. (ECF No. 18). The Court ordered Walsh to pay the full filing fee by March 25, 2022, or the case would be dismissed without prejudice. (*Id.* at 2). That deadline expired and Walsh did not pay the full filing fee or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court

¹ Because Walsh initiated this case prior to December 1, 2020, the full filing fee for a civil action is \$400.

1 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
2 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
3 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
4 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
5 dismiss an action on one of these grounds, the Court must consider: (1) the public's
6 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
7 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
8 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
9 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
10 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

11 The first two factors, the public's interest in expeditiously resolving this litigation
12 and the Court's interest in managing its docket, weigh in favor of dismissal of Walsh's
13 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
14 because a presumption of injury arises from the occurrence of unreasonable delay in filing
15 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
16 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
17 cases on their merits—is greatly outweighed by the factors favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic alternatives can
19 be used to correct the party's failure that brought about the Court's need to consider
20 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
21 that considering less drastic alternatives *before* the party has disobeyed a court order
22 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
23 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
24 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
25 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
26 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
27 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
28 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779

1 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
2 unless Walsh pays the full filing fee for this action, the only alternative is to enter a fourth
3 order setting another deadline. But the reality of repeating an ignored order is that it often
4 only delays the inevitable and squanders the Court's finite resources. The circumstances
5 here do not indicate that this case will be an exception: there is no hint that Walsh needs
6 additional time or evidence that he did not receive the Court's screening order. Setting
7 another deadline is not a meaningful alternative given these circumstances. So the fifth
8 factor favors dismissal.

9 **II. CONCLUSION**

10 Having thoroughly considered these dismissal factors, the Court finds that they
11 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
12 prejudice based on Walsh's failure to pay the full \$400 filing fee in compliance with this
13 Court's March 1, 2022 order. The Clerk of Court is directed to enter judgment accordingly
14 and close this case. No other documents may be filed in this now-closed case. If Walsh
15 wishes to pursue his claims, he must file a complaint and resolve the matter of the filing
16 fee in a new case.

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18 DATED THIS 5 day of April 2022.

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23 Gloria M. Navarro, Judge
24 United States District Court
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